

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-001310-BNB

PATRICK DURAY PORTLEY-EL,

Applicant,

v.

WARDEN HOYT BRILL (KCCC), and
CORRECTION CORPORATION OF AMERICA,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

NOV 05 2009

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Applicant, Patrick Duray Portley-El, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Kit Carson Correctional Center in Burlington, Colorado. Mr. Portley-El initiated this action by filing *pro se* an application for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging the validity of his convictions and sentences in Arapahoe County District Court case numbers 88CR1555, 88CR430, and 89CR734; Denver District Court case number 89CR184; and Adams County District Court case number 89CR237. He paid the \$5.00 habeas corpus filing fee.

On September 9, 2009, Magistrate Judge Boland, noting that Mr. Portley-El's application attacked multiple convictions from different state courts, ordered him to file within thirty days an amended application in compliance with Rule 2(e) of the Rules Governing Section 2254 Cases in the United States District Court. Rule 2(e) provides that an applicant who seeks relief from judgments of more than one state court must file

a separate application covering the judgment or judgments of each court. In the September 9 order, Magistrate Judge Boland explained to Mr. Portley-EI that the amended application he was being directed to file must designate which conviction or convictions, if they were from the same state court, he wished to pursue in the instant action. Magistrate Judge Boland further explained that Mr. Portley-EI may pursue the remainder of his convictions in separate applications filed in separate actions, if he chose to do so.

In the September 9, 2009, order, Magistrate Judge Boland pointed out that, for example, if Mr. Portley-EI wished to challenge his convictions in Arapahoe County District Court case numbers 88CR1555, 88CR430, and 89CR734, he must designate Nos. 88CR1555, 88CR430, and 89CR734 in the amended application he was being directed to file as the state convictions he is challenging in the instant action. If, instead, Mr. Portley-EI wished to challenge his conviction in Denver District Court case number 89CR184, he must designate No. 89CR184 in the amended application he was being directed to file as the state conviction he is challenging in the instant action. Lastly, Magistrate Judge Boland pointed out that, if Mr. Portley-EI wished to challenge his conviction in Adams County District Court case number 89CR237, he must designate No. 89CR237 in the amended application he was directed to file as the state conviction he is challenging in the instant action. Magistrate Judge Boland warned Mr. Portley-EI that if he failed to comply with the September 9 order within the time allowed, the application would be denied and the action dismissed without prejudice. The September 9 order also denied the petitions to strike the pre-answer response (docket

no. 9) and for entry of a default judgment (docket nos. 10 and 14) that Mr. Portley-El filed on August 27, 2009.


On September 23, 2009, in response to the September 9, 2009, order, Mr. Portley-El filed a document titled "Request for Findings of Fact," in which he disagreed with the denial of the petitions to strike the pre-answer response and for entry of a default judgment. However, he failed to comply with the September 9, 2009, order as directed. Accordingly, it is

ORDERED that the habeas corpus application is denied and the action dismissed without prejudice for the failure of Applicant, Patrick Duray Portley-El, within the time allowed to comply with the September 9, 2009, order for an amended application that complied with Rule 2(e) of the Rules Governing Section 2254 Cases in the United States District Court Section 2254 Rules and with the directives of the September 9 order. It is

FURTHER ORDERED that the request for findings of fact is denied.

DATED at Denver, Colorado, this 5th day of November, 2009.

BY THE COURT:


ZITA L. WEINSHIENK, Senior Judge
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 09-cv-01310-BNB

Patrick Duray Portley-El
Prisoner No. 62950
Kit Carson Corr. Center
PO Box 2000
Burlington, CO 80807

Christopher Y. Bosch
Assistant Attorney General
DELIVERED ELECTRONICALLY

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the
above-named individuals on 11/5/09

GREGORY C. LANGHAM, CLERK

By  _____

Deputy Clerk